BEFORE THE ARKANSAS DEPARTMENT OF EDUCATION
STATE BOARD OF EDUCATION
#4 Capitol Mall
Little Rock, AR

AUGUST 6, 2015
10:00 A.M.

APPEARANCES:

Mr. Johnny Key	Commissioner
Ms. Toyce Newton	Chairperson
Ms. Mireya Reith	Vice Chairman
Ms. Vicki Saviers	Board Member
Mr. Joseph Black	Board Member
Dr. Jay Barth	Board Member
Ms. Diane Zook	Board Member
Ms. Susan Chambers	Board Member
Ms. Charisse Dean	Board Member
Mr. R. Brett Williamson	Board Member
Ms. Ouida Newton	Teacher of the Year/ Non-Voting Member

LEGAL COUNSEL FOR THE BOARD:

MS. LORI FRENO, ADE Deputy General Counsel
MS. JENNIFER DAVIS, ADE Attorney Specialist

SHARON HILL COURT REPORTING
(501) 847-0510

COMMISSIONER'S REPORT

EXHIBIT ONE (1)

STATE OF ARKANSAS
THE ATTORNEY GENERAL
LESLIE RUTLEDGE

Opinion No. 2015-051

July 17, 2015

The Honorable Alan Clark
State Senator
P.O. Box 211
Lonsdale, AR 72087

Dear Senator Clark:

This is in response to your request for my opinion concerning certain provisions of Act 560 of 2015, which amended the Public School Choice Act of 2013. As background for your questions, you state:

> The passage of Act 560 of 2015 (Act) made certain amendments to the primary Arkansas laws governing public school choice and poses several questions with regard to the nature and scope of the obligations placed upon the Arkansas Department of Education (ADE) and public school districts.
>
> Section 1 of the Act creates a new § 6-13-113 of the Arkansas Code and requires school districts that are subject to a desegregation [sic] or desegregation order to notify the Department of Education in writing by January 1, 2016. The section also requires a school district that is subject to a desegregation order or a desegregation-related order to include in the written notice certain information.
>
> In Section 6 of the Act, the Act amends Ark. Code Ann. § 6-18-1906, which now states, in pertinent part:
>
> (a)(1) If the provisions of this subchapter conflict with a provision of an enforceable desegregation court order or a district's court-approved desegregation plan regarding the effects of past

323 CENTER STREET, SUITE 200 • LITTLE ROCK, ARKANSAS 72201
TELEPHONE (501) 682-2007 • FAX (501) 682-8084
INTERNET WEBSITE • http://www.ag.state.ar.us/

racial segregation in student assignment, the provisions of the order or plan shall govern.

(2) If a school district claims a conflict under subdivision (a)(1) of this section, the school district shall immediately submit proof from a federal court to the Department of Education that the school district has a genuine conflict under an active desegregation order or active court-approved desegregation plan with the interdistrict school choice provisions of this subchapter.

In light of the foregoing background information, you have posed the following questions:

1. What are the legal obligations with which a school district must comply in order to declare a conflict with the interdistrict school choice provisions of the Act?

2. Must a school district provide proof of a conflict on an annual basis?

3. If a school district declares a conflict with the interdistrict school choice provisions of the Act, what obligations, if any, does the ADE have to review a school district's declared conflict to determine whether the school district met the requirements of the Act? Specifically, does the ADE have any obligation or authority to review the information provided by the school district and determine:

   (a) Whether a school district has provided sufficient proof of a conflict with a desegregation order or court-approved desegregation plan?

   (b) Whether the desegregation order or court-approved desegregation plan remain active?

   (c) Whether a genuine conflict exists between the school district's desegregation order or court-approved desegregation plan and the interdistrict school choice provisions of the Act?

(d) Whether it can require a school district to provide additional information or deny a determination of a limitation of the Act until the information is provided?

4. If a school district declares a conflict with the interdistrict school choice provisions of the Act and the ADE is required to make any of the determinations set forth in 3(a)-(c) above, is the ADE required to provide notice of those determinations? And, if so:

   (a) To whom must the notice be provided?

   (b) May a student or a student's parent(s) continue to make application for school choice transfer under the interdistrict school choice provisions of the Act if the ADE has not made, and provided notice of, any of the determinations set forth in 3(a)-3(c) above?

   (c) May a nonresident district accept applications for school choice transfer from a student who resides in a school district which declares a conflict with the interdistrict school choice provisions of the Act if the ADE has not made, and provided notice of, any of the determinations set forth in 3(a)-3(c) above?

5. What is the applicability, if any, of Section 1 of the Act (§ 6-13-113) with regard to the remainder of the Act? Is the section simply a notice requirement for a school district that does not, alone, constitute a declaration that a school district has a conflict with any interdistrict school choice provisions governed by the remainder of the Act?

RESPONSE

With respect to Question 1, the legal obligations on a school district to be able to claim a conflict with the Public School Choice Act are clear in the statute. The answer to Question 2 is "no," in my opinion. As to Question 3, in my opinion, the Arkansas Department of Education does not have the authority to take the actions about which you have inquired. Question 4 is moot in light of my response to Question 3. It is my opinion in response to Question 5 that simply providing the information required by section 1 of Act 560 of 2015, to be codified at Ark. Code

Ann. § 6-13-113, would not, by itself, serve as a claim of conflict under Ark. Code Ann. § 16-18-1906(a)(2), as amended by Act 560.

DISCUSSION

Before addressing your questions, I will summarize the relevant portions of what is now called the Public School Choice Act of 2015[1] ("the Public School Choice Act"), as well as the relevant changes made to that act by Acts 2015, No. 560 ("Act 560"). The Public School Choice Act[2] sets forth a public school choice program that is obligatory for each school district[3] unless certain statutory limitations apply.[4] One of those limitations is if the transfer conflicts "with an enforceable judicial decree or court order remedying the effects of past racial segregation in the school district."[5] The statute states that "[i]f the provisions of this subchapter conflict with a provision of an enforceable desegregation court order or a district's court-approved desegregation plan regarding the effects of past racial segregation in student assignment, *the provisions of the [court] order or plan shall govern.*"[6]

---

[1] Ark. Code Ann. § 6-18-1901 *et seq.* (Repl. 2013), *as amended by* Acts 2015, No. 560. Act 560 went into effect on March 20, 2015.

[2] By way of background, in 2012, a federal district court declared an earlier enactment—the Public School Choice Act of 1989 (formerly codified at Ark. Code Ann. § 6-18-206 (2012) *repealed by* Acts 2013, No. 1227)—unconstitutional because of the law's explicit race-based exception to interdistrict transfers. *See Teague v. Ark. Bd. of Educ.*, 873 F. Supp. 2d 1055 (W.D. Ark. 2012), *vacated by Teague v. Cooper*, 720 F.3d 973 (8th Cir. 2013). The 1989 law provided, with certain exceptions, that "[n]o student may transfer to a nonresident district where the percentage of enrollment for the student's race exceeds that percentage in the student's resident district...." Ark. Code Ann. § 6-18-206(f)(1) (2012). The court's ruling led the General Assembly in 2013 to repeal section 6-18-206 and to enact a new public school choice law. *See* Acts 2013, No. 1227.

[3] *See* Ark. Code Ann. § 6-18-1903(b) (Repl. 2013) ("Each school district shall participate in a public school choice program consistent with this subchapter.")

[4] These limitations are found at Ark. Code Ann. § 6-18-1906 *as amended by* Act 560.

[5] Ark. Code Ann. § 6-18-1901(b)(3) (Repl. 2013).

[6] Ark. Code Ann. § 6-18-1906(a) (Repl. 2013) (renumbered as subsection (a)(1) by Act 560) (emphasis added).

One significant change made by Act 560 to the Public School Choice Act was an attempt to require proof from a school district that wishes to claim an exemption from the Public School Choice Act because of a desegregation-related court order. Before Act 560, a school district that wished to exempt itself from school choice needed only to declare annually that "the school district is subject to the desegregation order ... remedying the effects of past racial segregation."[7] This declaration was irrevocable for one year and could be renewed each year by notice to the ADE. A school district's board of directors also had the option, after an exemption year, "to elect to participate in public school choice under this section if the school district's participation does not conflict with the school district's federal court-ordered desegregation program."[8]

Act 560, however, repealed that provision and added a new subsection that states:

> If a school district claims a conflict under subdivision (a)(1) of this section, the school district shall immediately submit proof from a federal court to the Department of Education that the school district has a genuine conflict under an active desegregation order or active court-approved desegregation plan with the interdistrict school choice provisions of this subchapter.[9]

This new language imposes more of a burden on a school district. It is no longer sufficient for a school district to simply declare itself exempt because of a court's desegregation order. Now, the school district seeking exemption must submit to the ADE "proof from a federal court [of] a genuine conflict" with such an order. Act 560, however, provides no guidance as to what would be both necessary and sufficient to constitute such "proof" from a federal court. It is similarly silent as to what the ADE is supposed to do with such proof once it is submitted.

Act 560 also added a new section within the general provisions chapter regarding school districts.[10] That section requires a school district to provide the ADE written notice by January 1, 2016 that the district is subject to a desegregation or

---

[7] Ark. Code Ann. § 6-18-1906(b) (Repl. 2013).

[8] *Id.*

[9] Act 560, § 6 at p. 5 (to be codified at Ark. Code Ann. § 6-18-1906(a)(2)).

[10] *Id.* at § 1 (to be codified at Ark. Code Ann. § 6-13-113).

desegregation-related order.[11] This notice also must contain certain information about that school district's existing desegregation orders.[12] Moreover, that section requires school districts that are released from court supervision related to such orders to "promptly notify" the ADE.[13] Additionally, the ADE is to post all such written notifications on its website.[14] School districts that fail to meet these requirements will be deemed in violation of state accreditation standards.[15]

With this summary of the law and the relevant changes brought by Act 560 in mind, I will now respond to your particular questions.

Question 1: What are the legal obligations with which a school district must comply in order to declare a conflict with the interdistrict school choice provisions of the Act?

In my opinion, Act 560 makes clear what a school district must do if it claims a conflict with the provisions of the Public School Choice Act. The school district "shall immediately submit proof from a federal court to the Department of Education that the school district has a genuine conflict under an active desegregation order or active court-approved desegregation plan with the interdistrict school choice provisions of this subchapter."[16] Beyond stating this obligation, however, the statute is silent. As noted above, there is no indication or guidance as to what would be both necessary and sufficient to constitute such "proof from a federal court."

---

[11] *Id.* (to be codified at Ark. Code Ann. § 6-13-113(a)).

[12] *Id.* (to be codified at Ark. Code Ann. § 6-13-113(b)). The information required by the statute comprises 1) a copy of the court's desegregation or desegregation-related order; 2) the case heading and case number of each case in which the order was entered; 3) the name and location of each court with jurisdiction over such orders; and, 4) a description of the school choice student transfer obligations related to such order to which the school district may be subject.

[13] *Id.* (to be codified at Ark Code Ann. § 6-13-113(c)).

[14] *Id.* (to be codified at Ark Code Ann. § 6-13-113(e)).

[15] *Id.* (to be codified at Ark Code Ann. § 6-13-113(d)).

[16] Act 560 at § 6, p. 5 (to be codified at Ark. Code Ann. § 6-18-1906(a)(2)). The Public School Choice Act places other limitations on school districts' abilities to accept school choice transfers, such as a numerical net maximum limit on such transfers. *See id.* at § 6, p. 6 (to be codified at Ark. Code Ann. § 6-18-1906(b)). Because the other limitations do not appear to be the focus of your inquiry, I only mention them here.

Question 2: Must a school district provide proof of a conflict on an annual basis?

"No," in my opinion. The Public School Choice Act, as amended by Act 560, contains no language requiring annual declarations or renewals. As stated above, Act 560 repealed the law granting school districts the option to declare an exemption from school choice each year.[17]

Moreover, as a practical matter, there would be no need for a school district to resubmit its proof of a conflict. A court's desegregation order to a school district remains in place, as written, until it is lifted, modified or, by its own terms, comes to an end. A lower court's order also could be overturned or vacated by a higher court. Absent such a change, however, the school district's conflict remains.

Question 3: If a school district declares a conflict with the interdistrict school choice provisions of the Act, what obligations, if any, does the ADE have to review a school district's declared conflict to determine whether the school district met the requirements of the Act? Specifically, does the ADE have any obligation or authority to review the information provided by the school district and determine (a) whether a school district has provided sufficient proof of a conflict with a desegregation order or court-approved desegregation plan; (b) whether the desegregation order or court-approved desegregation plan remain active; (c) whether a genuine conflict exists between the school district's desegregation order or court-approved desegregation plan and the interdistrict school choice provisions of the Act; and (d) whether it can require a school district to provide additional information or deny a determination of a limitation of the Act until the information is provided?

This question seems to boil down to whether the ADE can or must make a determination as to the veracity of a school district's claim of a conflict and/or the adequacy of the "proof" it has submitted. The question also asks whether the ADE can require a school district to provide additional information (presumably if the proof is in some way deemed "insufficient") or deny a school district's excusal from the Act until the information is provided.

In my opinion, the ADE is neither authorized nor obligated to take the actions contemplated. As mentioned above, the law is silent on what, if anything, the

[17] *See* text accompanying notes 7-9 *supra*.

ADE is supposed to do with the "proof" that a school district submits. The Public School Choice Act, as amended by Act 560, does not charge the ADE to undertake to verify a school district's claim of exemption[18] or make a determination as to the sufficiency or truth of the proof submitted.[19] Nor has my research yielded any other law assigning such a role to the ADE.

I will note that this may raise a problematic aspect of the new law. Suppose, for instance, a school district submits "proof" that is patently inadequate to show a "genuine conflict" with the Public School Choice Act. I see no clear procedure under the law for challenging such a submission. I can speculate that a parent of a student would mount a challenge by seeking relief from a court of competent jurisdiction in such a case. But the law is not clear in this regard, suggesting the need for legislative clarification.

Question 4: If a school district declares a conflict with the interdistrict school choice provisions of the Act and the ADE is required to make any of the determinations set forth in 3(a)-(c) above, is the ADE required to provide notice of those determinations? And, if so: (a) To whom must the notice be provided; (b) May a student or a student's parent(s) continue to make application for school choice transfer under the interdistrict school choice provisions of the Act if the ADE has not made, and provided notice of, any of the determinations set forth in 3(a)-3(c) above; and (c) May a nonresident district accept applications for school choice transfer from a student who resides in a school district which declares a conflict with the interdistrict school choice provisions of the Act if the ADE has not made, and provided notice of, any of the determinations set forth in 3(a)-3(c) above?

This question is rendered moot in light of my response to Question 3. As a

---

[18] It is my understanding that the ADE takes the position that it is neither authorized nor equipped to construe federal court desegregation orders issued to individual school districts for the purposes of the Public School Choice Act.

[19] The ADE does not appear to assume this authority either, according to its proposed "Rules Governing the Public School Choice Act of 2015," found at http://www.arkansased.gov/public/userfiles/Legal/Legal-Pending%20Rules/Public_School_Choice_Draft_for_Public_Comment_April_2015.pdf (last accessed June 10, 2015). It is well established that the construction of a state statute by an administrative agency, while not binding, is afforded great deference by the courts and will not be overturned unless it is clearly wrong. *See e.g., Brookshire v. Adcock*, 2009 Ark. 207, 307 S.W.3d 22, 26; *Ford v. Keith*, 338 Ark. 487, 494, 996 S.W.2d 20, 25 (1999).

general matter, however, I will note that the ADE has no notification responsibilities to parents of students under the Public School Choice Act.

Question 5: What is the applicability, if any, of Section 1 of the Act (§ 6-13-113) with regard to the remainder of the Act? Is the section simply a notice requirement for a school district that does not, alone, constitute a declaration that a school district has a conflict with any interdistrict school choice provisions governed by the remainder of the Act?

Upon codification as Ark. Code Ann. § 6-13-113, section 1 of Act 560 will be found in chapter 13 of Title 6, whereas the Public School Choice Act is found in chapter 18. Thus, standing alone, section 1 of Act 560 will not be found as part of the Public School Choice Act. However, that section does have a tangential relation to the Public School Choice Act. One of the pieces of information it requires school districts to submit to the ADE by January 1, 2016 is a "description of the school choice transfer obligations, if any, the school district is subject to, related to that [desegregation] order."[20]

As to whether the submission required by section 1 of Act 560 would, by itself, serve as the claim of a conflict under Ark. Code Ann. § 6-18-1906, the answer is "no," in my opinion. The language of Ark. Code Ann. § 6-18-1906, as amended by Act 560, requires that a school district claiming a conflict with the Public School Choice Act because of a court desegregation order take an action to assert such conflict by submitting "proof" from a federal court to the ADE. Again, what constitutes such "proof" and how its sufficiency and veracity is to be determined are matters left unaddressed by the Public School Choice Act, as amended by Act 560.

Assistant Attorney General Ray Pierce prepared this opinion, which I hereby approve.

Sincerely,

LESLIE RUTLEDGE
Attorney General

LR/RP:cyh

[20] Act 560, § 1 (to be codified at Ark. Code Ann. § 6-13-113(b)(4)).

A-2 / A-3

EXHIBIT ONE (1)

IN THE UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF ARKANSAS
TEXARKANA DIVISION

MARY TURNER, Individually and As Next Friend of TORRANCE TURNER, A Minor; LUCY CHEATHAM, Individually and As Next Friend of ANDREW CHEATHAM, A Minor; MARY ROSE, Individually and As Next Friend of VICTOR ROSE, A Minor; OBIE SASSER, Individually and As Next Friend of FRANK SASSER, A Minor; BARBARA DUDLEY, Individually and As Next Friend of KERRI DUDLEY, A Minor; IDA DUDLEY, Individually and As Next Friend of TIA DUDLEY, A Minor; ROSIE and JOHNNY BLAIR, Individiually and As Next Friends of KIMBERLY BLAIR, A Minor; ROBERT WISE, Individually and As Next Friend of VALARIE WISE, A Minor; and MILDRED THOMPSON, Individually and As Next Friend to KELONA THOMPSON, A Minor, PLAINTIFFS

VS. NO. 92-4046

LEWISVILLE SCHOOL DISTRICT NO. 1, A Public Body Corporate; LARRY HUDSON, Individually and In His Official Capacity as Superintendent of Schools for the Lewisville School District No. 1, A Public Body Corporate; HOLLIS SASSER, Individually and In His Official Capacity as President of the Board of Education of the Lewisville School District No. 1, A Public Body Corporate; HARRY SMITH, LESLIE NUTT, STEVE GROVES, CAROLYN MOSS, and JOHNNY ROSS, Individually and In Their Official Capacities as Members of the Board of Education of the Lewisville School District No. 1, A Public Body Corporate, DEFENDANTS.

COMPLAINT

1. This is an action pursuant to 28 U.S.C. Section 1343 to secure relief provided by the Fourteenth Amendment to the United States Constitution and by 42 U.S.C. Sections 1981 and 1983.

2. The plaintiffs are Mary Turner, individually and as next friend to Torrance Turner, a minor, Lucy Cheatham, individually and next friend to Andrew Cheatham, a minor, Obie Sasser, individually, and as next friend to Frank Sasser, a minor, Mary rose, individually and as next friend to Victor Rose, a minor, Barbara Dudley, individually and as next friend to Kerri Dudley, a minor, Ida M. Dudley, individually and as next friend to Tim Dudley, a minor, Rosie and Johnny Blair, individually and as next friends to Kimberly Blair, a minor, Robert Wise, individually and as next friend to Valarie Wise, a minor, and Mildred Thompson, individually and as next friend to Kelona Thompson, a minor. Each plaintiff is a citizen of the United States who resides in the Lewisville School District, which is located in Lafayette County, Arkansas. Each minor plaintiff attends and is eligibile to attend the Lewisville Public Schools.

3. The defendants are the Lewisville School District No. 1, a public body corporate, Larry Hudson, individually and in his official capacity as superintendent of schools for the Lewisville School District No. 1, Hollis Sasser, individually and in his official capacity as president of the Board of Education of the Lewisville School District No. 1, Harry Smith, Leslie Nutt, Steve Groves, Carolyn Moss, and Johnny Ross, individually and in their official capacities as members of the Board of Education of the Lewisville School District No. 1.

4. This is an action for declaratory judgment to determine and define the rights and other legal relations between the parties

to this action.

5. The defendants have created or allowed to be created a racial environment within the public school system in Lewisville, Arkansas. The racial environment is pervasive, especially in its impact and teaching of and upon black pupils.

6. The school system has a current enrollment of approximately 586 students of which between 58% are members of the black or African American race.

7. The school system employs approximately 45 persons who are certified by the Arkansas State Department of Education. Of this number, all but seven (7) are of the white race. Three of the seven black teachers work at the elementary level and the other four works at the high school level with two of the four high school teachers hired as a coach and special education teacher.

8. The District employs approximately thirty (30) support persons such as aides, secretaries, janitors, bus drivers, and cafeteria workers, who are not certified by the State Education Department.

a. The district employs three secretaries to work in the administrative office, all are white;

b. The district employs ten persons as aides, all are black with the exception of three;

c. The district employs four persons as bus drivers and/or mechanics, all are white with the exception of one;

d. The district employs seven persons as janitors, all are black, with the exception of one;

other activities, or receive other academic honors.

12. Furthermore, the district's policy of awarding an "A" letter grade of only two points has prevented some black students from participating in athletic events. Minor plaintiffs Andrew Cheatham, Torrance Turner, Frank Sasser, and Victor Rose, were taken off the basketball team when they supposedly became ineligible to compete for basketball. The minor plaintiffs would have been eligible had grades for prior athletic activities and/or P.E. would have been given the value normally given for other courses.

13. The district purports to have a practice of giving parents notice when their children are in danger of failing courses. In the case of Torrance Turner, Torrance was denied the right to participate in 10th grade basketball because he allegedly had a failing grade. The district did not provide an interim report to his mother, adult plaintiff Mary Turner, which would have given her timely notice of Torrance's potential grade. Consequently, Torrance received a bad grade, and was denied the right to participate in 10th grade athletics. Torrance's situation, on information and belief, is frequently repeated in that the district does not ordinarily give black parents interim reports before their children reach below par performance.

14. On occasions, white students who have received failing grades, have been allowed to delete those grades from their transcript, while black students have not been afforded this same protection, in violation of their constitutional rights of equal

educational opportunities.

15. Each minor plaintiff above the third grade has been subjected to adverse or discriminatory discipline within the school system at some time during their school years. Also, black students are subjected to greater disciplinary sanctions and they are generally kept out of some student organizations.

16. School officials tolerate the use of racially derogatory statements and profane terms when directed by school staff toward black students.

17. The school district has received a number of applications from blacks seeking employment as secretaries, teachers, and administrators. Although the district concedes that many of the applicants have been qualified, it usually found ways to avoid employment of blacks or African American people in these positions.

18. The plaintiffs have been deprived of their well-defined rights to be free from unequal and discriminatory treatment in any and all aspects of the Lewisville School System. The plaintiffs have no effective recourse than to pursue relief through this federal civil action. Any other relief would be so uncertain, costly and time consuming to provide effective redress of their grievances.

THEREFORE, plaintiffs request that the Court set this matter down for early hearing and thereafter provide them with appropriate relief which plaintiffs suggest as follows:

a. a declaratory judgment that unlawful vestiges of discrimination against black students and black prospective staff

members is unlawful;

b. an injunction specifically prohibiting defendants from engaging in acts which tend to discriminate against blacks or African American students and/or their parents or those other persons within the black community who apply for work at any level within the Lewisville School District No. 1;

c. an injunction which forbids the Lewisville School District No. 3 from allowing, perpetuating or creating a racial environment within the School District in any form or fashion and appropriate affirmative injunctive relief which remedies proved acts of racial discrimination against any of the plaintiffs;

d. an injunction which forbids the Lewisville School District No. 1 from assigning a value of only two points given to students who make the letter grade of "A" in athletics and physical education, and to require the school district to assign a value of all grades given in athletics and physical education the same value as grades given in all other courses; and

e. award to plaintiff such further relief necessary to redress the discrimination and prevent the perpetuation of its effects.

The plaintiffs further pray for their costs, including reasonable attorney's fees.

Respectfully submitted,

JOHN W. WALKER, P.A.
1723 Broadway
Little Rock, AR 72206
(501) 374-3758

John W. Walker - Bar No. 64046

Austin Porter Jr., #86145

d:lewisville

A-2 / A-3

EXHIBIT TWO (2)

IN THE UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF ARKANSAS
TEXARKANA DIVISION

MARY TURNER, ET AL PLAINTIFFS

VS. No. 92-4040

LEWISVILLE SCHOOL DISTRICT NO. 1, ET AL DEFENDANTS

ANSWER

Come the Defendants, Lewisville School District No. 1, Larry Hudson, Individually and in his official capacity as Superintendent, Hollis Sasser, Harry Smith, Leslie Nutt, Steve Groves, Carolyn Moss, and Johnny Ross, Individually and in their official capacities as members of the school board, and for their Answer to the Complaint of Plaintiffs state:

1. That they admit that this is an action filed pursuant to 42 U.S.C. §§1981 and 1983, but deny that Plaintiffs are entitled to any relief pursuant to said statutes and all other material allegations of paragraph 1;

2. That they admit all material allegations of paragraph 2;

3. That they admit all material allegations of paragraph 3, but state, affirmatively, that there is no basis for the Defendants to be named individually;

4. That they admit that this is an action for declaratory judgment, but deny that Plaintiffs are

entitled to any declaratory relief and all other material allegations of paragraph 4;

5. That they deny all material allegations of paragraph 5;

6. That they admit all material allegations of paragraph 6;

7. That they admit that the school district employs approximately forty-five (45) certified employees, but deny all other material allegations of paragraph 7;

8. That they admit that the district employs approximately thirty (30) non-certified employees, but deny all other material allegations of paragraph 8;

9. That they admit that the school district operates three separate schools, employs two principals and one assistant principal, all of whom are white; that they, otherwise, deny all material allegations of paragraph 9;

10. That they deny all material allegations of paragraphs 10, 11, 12, 13, 14, 15, 16, 17, and 18, and all other material allegations of the Complaint not, otherwise, admitted herein;

11. That the Complaint fails to state a cause of action upon which relief can be granted and should be dismissed; that the Complaint, specifically, fails to state a cause of action against the individual defendants and they should be, individually, dismissed;

12. That the Defendants do not discriminate against blacks and have not created, or allowed to be created, a racial environment within the school district that is discriminatory or derogatory toward blacks; that the Defendants have a unitary system which is fair and impartial to all races, are in complaince with all federal laws, and provide quality and nondiscrminatory education to all students within the district;

13. That all acts of the Defendants were done in good faith, and they plead their absolute or qualified immunity;

14. That they reserve the right to amend after completion of discovery;

WHEREFORE, Defendants pray for dismissal of the Complaint, for their costs herein expended, and all other proper relief.

WILLIAM G. LAVENDER
Attorney at Law
507 Hickory
P. O. Box 1938
Texarkana, AR 75504

AND

LASER, SHARP, MAYES,
WILSON, BUFFORD & WATTS, P.A.
101 S. Spring Street, Suite 300
Little Rock, Arkansas 72201-2488
(501) 376-2981
ID# 72014

By: _____
DAN F. BUFFORD

CERTIFICATE OF SERVICE

I, Dan F. Bufford, do hereby certify that a copy of the foregoing pleading was mailed to all attorneys of record as listed below this ____ day of May, 1992.

DAN F. BUFFORD

Mr. John Walker
1723 Broadway
Little Rock, AR 72206

0038D

A-2 / A-3

EXHIBIT THREE (3)

IN THE UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF ARKANSAS
TEXARKANA DIVISION

MARY TURNER, Individually and as Net Friend of TORRANCE TURNER, A Minor; LUCY CHEATHAM, Individually and As Next Friend of ANDREW CHEATHAM, A Minor; MARY ROSE, Individually and As Next Friend of VICTOR ROSE, a Minor; OBIE SASSER, Individually and As Next Friend of FRANK SASSER, A Minor; BARBARA DUDLEY, Individually and As Next Friend of KERRI DUDLEY, A Minor; IDA DUDLEY, Individually and As Next Friend of TIA DUDLEY, A Minor; ROSIE and JOHNNY BLAIR, Individually and as Next Friends of KIMBERLY BLAIR, A Minor; ROBERT WISE, Individually and As Next Friend of VALARIE WISE, A Minor; and MILDRED THOMPSON, Individually and As Next Friend to KELONA THOMPSON, A Minor — PLAINTIFFS

vs. — CASE NO. 91-4040

LEWISVILLE SCHOOL DISTRICT NO. 1, A Public Body Corporate; LARRY HUDSON, Individually and In His Official Capacity as Superintendent of Schools for the Lewisville School District No. 1, A Public Body Corporate; HOLLIS SASSER, Individually and In His Official Capacity as President of the Board of Education of the Lewisville School District No. 1, A Public Body Corporate; HARRY SMITH, LESLIE NUTT, STEVE GROVES, CAROLYN MOSS, and JOHNNY ROSS, Individually and In Their Official Capacities as Members of the Board of Education of the Lewisville School District No. 1, A Public Body Corporate — DEFENDANTS

O R D E R

NOW on this 4th day of March, 1993, comes on for consideration the above-styled cause.

IT APPEARING to the court that the matters have been settled, counsel for all parties having so advised the court, it is ORDERED that the case be, and it is hereby, dismissed with prejudice, subject to the terms of the Consent Decree filed simultaneously herewith.

The court retains jurisdiction to vacate this Order and to reopen the action upon cause shown that settlement has not been completed and that a party wishes this court to enforce the Consent Decree specifically.

JIMM LARRY HENDREN
UNITED STATES DISTRICT JUDGE

on 3/5/93

A-2 / A-3

EXHIBIT FOUR (4)

Consent decree legal definition of consent decree

http://legal-dictionary.thefreedictionary.com/consent+decree

consent decree

Also found in: **Dictionary/thesaurus**, **Financial**, **Acronyms**, **Wikipedia**.

Consent Decree

A settlement of a lawsuit or criminal case in which a person or company agrees to take specific actions without admitting fault or guilt for the situation that led to the lawsuit.

A consent decree is a settlement that is contained in a court order. The court orders injunctive relief against the defendant and agrees to maintain jurisdiction over the case to ensure that the settlement is followed. (Injunctive relief is a remedy imposed by a court in which a party is instructed to do or not do something. Failure to obey the order may lead the court to find the party in **Contempt** and to impose other penalties.) Plaintiffs in lawsuits generally prefer consent decrees because they have the power of the court behind the agreements; defendants who wish to avoid publicity also tend to prefer such agreements because they limit the exposure of damaging details. Critics of consent decrees argue that federal district courts assert too much power over the defendant. They also contend that federal courts have imposed conditions on state and local governments in **Civil Rights Cases** that usurp the power of the states.

Most civil lawsuits are settled before going to trial and most settlements are private agreements between the parties. Typically, the plaintiff will file a motion to dismiss the case once the settlement agreement has been signed. The court then issues a dismissal order and the case is closed. However, if the defendant does not live up to the terms of the ettlement agreement the plaintiff cannot reactivate the old lawsuit. This means filing a new lawsuit with the court and going to the end of the line in order to process the case.

In more complex civil lawsuits that involve the conduct of business or industry, and in actions by the government against businesses that have allegedly violated regulatory laws, consent decrees are regularly part of the settlement agreement. A court will maintain jurisdiction and oversight to make sure the terms of the agreement are executed. The threat of a contempt order may keep defendants from dragging their feet or seeking to evade the intent of the agreement. In addition, the terms of the settlement are public.

Certain types of lawsuits require a court to issue a consent decree. In **Class Action** settlements, Rule 23 of the Federal Rules of Procedure mandates that a federal district court must determine whether a proposed settlement is fair, adequate, and reasonable before approving it. Under the Antitrust Procedures and Penalties Act (the Tunney Act), 15 U.S.C.A. § 16(b)-(h), the court must review proposed consent decrees in antitrust suits filed by the **Justice Department**. The statute directs the court to review certain items, including whether the decree advances the public interest.

The U.S. Supreme Court, in *Local No.93, Int'l Ass'n of Firefighters v. City of Cleveland*, 478 U.S. 501, 106 S.Ct. 3063, 92 L.Ed.2d 405 (1986), ruled that consent decrees "have attributes both of contracts and of judicial decrees." The division between contracts and judicial decrees suggests that consent decrees are contracts that resolve some issues through the consent of the parties. However, for some issues, the decree contains judicial acts rendered by the judge, not the parties. Commentators have noted that these dual attributes require a court to determine when it is ppropriate to "rubber-stamp" a proposed settlement and when it is more appropriate for the court to treat the proposal as it would any judicial order.

The federal courts have been criticized for using consent decrees to reform prison systems, school systems, and other government agencies. Some courts have maintained oversight of agencies for many years and have imposed

conditions that have cost state and local governments substantial amounts of money. Congress intervened in one litigation area when it passed the Prison Litigation Reform Act of 1995 (Pub.L. 104-134, 110 Stat. 1321). The law imposed strict limits on what federal courts could do in the future to improve prison conditions through the use of consent decrees. In addition, it gave government agencies the right to seek the termination of consent decrees, many of which had lasted for decades.

Further readings

Kane, Mary Kay. 1996. *Civil Procedure in a Nutshell.* 4th ed. St. Paul, Minn.: West.

Mengler, Thomas M. 1988. "Consent Decree Paradigms: Models Without Meaning." *Boston College Law Review* 29.

Cross-references

Civil Action.

consent decree

n. an order of a judge based upon an agreement, almost always put in writing, between the parties to a lawsuit instead of continuing the case through trial or hearing. It cannot be appealed unless it was based upon fraud by one of the parties (he lied about the situation), mutual mistake (both parties misunderstood the situation) or the court does not have jurisdiction over the case or the parties. Obviously, such a decree is almost always final and non-appealable since the parties worked it out. A consent decree is a common practice when the government has sued to make a person or corporation comply with the law (improper securities practices, pollution, restraints of trade, conspiracy) or the defendant agrees to the consent decree (often not to repeat the offense) in return for the government not pursuing criminal penalties. In general a consent decree and a consent judgment are the same. (See: **consent judgment**)

consent decree *noun* an order accepted by the parries, an order acquiesced by the parties, an order agreed to by the parties, an order approved by the parties, an order consented to by the parties, an order endorsed by the parries, an order supported by the parties, an order with the accord of the parties, **consent order**
Associated concepts: consent rule

A-6

EXHIBIT ONE (1)

IN THE CIRCUIT COURT OF ST. FRANCIS COUNTY, ARKANSAS
DOMESTIC RELATIONS DIVISION

BRANDY LEANN BASHAW **PLAINTIFF**

VS. **CASE NO. 62DR-2011-54-3**

GLEN JASON BASHAW **DEFENDANT**

PETITION FOR CHANGE OF CUSTODY

COMES now Defendant, Glen Bashaw, by and through his attorney, Kathleen Talbott of Talbott & Ladd, P.A., and for his Petition for Change of Custody, does state:

1. That this Court has continuing jurisdiction of this matter in personam and in rem.

2. That an *Agreed Order* was entered on or about May 8, 2012, ordering the parties joint custody with neither party designated as the primary custodial parent, and with no specific visitation days outlined.

3. That there has been a material change of circumstances and Defendant should be awarded primary care and custody of the minor child for the following reasons, to-wit:

   a. That the Plaintiff plans to move to Mississippi, which is out of state, and will make joint custody impossible; and

   b. The Plaintiff has not used good judgment in the past in parenting the parties' child; and

   c. Other actions which are inconsistent with the best interests of the child.

4. The Defendant has and will continue to assume his responsibilities toward the child by providing care, supervision, protection, and financial support for the child, and it is in the best interests of the child that Defendant be awarded custody.

5. Plaintiff should be awarded visitation and be ordered to pay child support.

WHEREFORE, PREMISES CONSIDERED, Defendant prays this Court grants his petition for change of custody, for child support, and for all other relief to which the facts may tend to prove.

Respectfully Submitted:

TALBOTT & LADD, P.A.
Attorneys for Defendant

By: _____

Kathleen Talbott (Bar No. 96195)
P.O. Box 1143
Wynne, AR 72396
(870) 238-0066

IN THE CIRCUIT COURT OF ST. FRANCIS COUNTY, ARKANSAS
DOMESTIC RELATIONS DIVISION

BRANDY LEANN (BUNCH) BASHAW **PLAINTIFF**

v.

NO.: D4-2011-54-3

GLEN JASON BASHAW **DEFENDANT**

VERIFIED PETITION TO MODIFY CUSTODY PROVISIONS OF DECREE OF DIVORCE

Comes plaintiff, Brandy Leann Bashaw (now Bunch), by and through her lawyer, Michael D. Snell, and for her Verified Petition to Modify the Custody Provisions of the Decree of Divorce entered herein, does state as follows:

1. Plaintiff, Brandy Leann (Bunch) Bashaw ("Bunch") is a resident citizen of the State of Arkansas and resides in Cross County.

2. Defendant, Glen Jason Bashaw ("Bashaw") is a resident citizen of the State of Arkansas and resides in St. Francis County.

3. This court has proper jurisdiction of the parties and the subject matter of this action and venue is appropriately laid in the Circuit Court of St. Francis County.

4. The parties are the natural parents of a minor child, namely, Rosalynn Jade Bashaw, born February 28, 2007. The minor child has resided in the State of Arkansas for six months preceding the filing of this action.

5. Pursuant to the provisions of an Agreed Order entered herein on or about May 8, 2012, the parties share custody of the minor child as "joint custody", with neither party being designated as the primary custodial parent, and with no specific visitation days outlined, except

that the parties are to "manage the visitation of the child between themselves".

6. Since the entry of the previous Order, there has been and exists a material change in circumstances such that the previous custody provisions should be modified, same being in the best interests of the minor child. Specifically, the parties' ability to cooperate has eroded due to Bunch's marriage and pending relocation to Horn Lake, Mississippi; and the minor child has reached school age, and the joint custody arrangement is no longer practical with the parents living in different cities.

7. The minor child has expressed a desire that Bunch should have the primary care and custody of the minor child.

8. It is in the best interest of the minor child that Bunch be granted the primary care and custody of the minor child, subject to reasonable visitation by Bashaw, and that the court modify the provision of its previous Order "that neither party shall permanently remove the minor child from either Cross County, Arkansas or St. Francis County, Arkansas", to allow the minor child to reside with Bunch.

9. It is further in the best interest of the minor child that Bunch be awarded a reasonable amount of child support, to be paid by Bashaw according to the provisions of Arkansas supreme court Administrative Order No. 10.

WHEREFORE, PREMISES CONSIDERED, plaintiff prays that:

1. Upon hearing, the court determine that there exists a material change in circumstances warranting modification of the previous custody order herein, and that it is in the best interests of the minor child that said custody provisions be modified;

2. She be granted the primary care and custody of the minor child herein, subject to the

reasonable visitation of the defendant;

3. That the court set and award to plaintiff child support pursuant to Arkansas supreme court Administrative Order No. 10;

4. She be awarded judgment in her favor and against defendant for her reasonable attorney fees and for costs herein incurred;

5. That she be granted any and all further relief to which she may be entitled under law.

Respectfully submitted,

Michael D. Snell (07153)
P.O. Box 1280
Marion, AR 72364
(870) 739-8487

STATE OF ARKANSAS)
) ss.
COUNTY OF CRITTENDEN)

VERIFICATION

I, Brandy Leann Bunch, having been duly sworn, do hereby state under oath that the above and foregoing facts contained in the foregoing Petition for Modification of Custody are true and correct to the best of my knowledge, information and belief.

Brandy Leann Bunch

STATE OF ARKANSAS)
) ss.
COUNTY OF CRITTENDEN)

ATTESTATION

Before me, a Notary Public, appeared on this the 19th day of March, 2015, the person known or properly identified to me as Brandy Leann Bunch, who, after having been duly sworn, affirmed the foregoing by her seal affixed hereto.

Elizabeth A. Murphree
Notary Public

My commission expires:

April 01, 2016

Elizabeth A. Murphree
Notary Public
Crittenden County, Arkansas
Comm. Exp. 04/01/2016
Commission # 12347297

COPY

IN THE CIRCUIT COURT OF ST. FRANCIS COUNTY, ARKANSAS
DOMESTIC RELATIONS DIVISION

BRANDY BASHAW PLAINTIFF

VS. NO. DR-2011-54-3

GLEN BASHAW DEFENDANT

AGREED ORDER MODIFYING CUSTODY

NOW on this 30th day of March, 2012, came on to be heard this matter, the Plaintiff appearing in person and by and through her attorney, Robert M. Ford, the Defendant appearing in person and by and through his attorney, Kathleen Talbott, and from the pleadings filed herein, the statements of counsel, the testimony of the parties, and other proof, matters and things before the Court, the Court doth find:

1. That this court has continuing jurisdiction and venue is proper.

2. That the parties have one minor child, age 5, and it is in her best interests that custody be changed from Plaintiff having sole care and custody of the child to joint custody to be shared between the parties.

3. That no child support is ordered, which is a deviation of the family support chart, because the parties earn similar wages and the child's time will be equally split between the parties.

4. That there is no schedule ordered for visitation; the parties are in communication and work together for the best interests of the child.

5. The child will start school in August, 2012; however, until that time, she is enrolled in preschool, and this cost shall be shared equally between the parties.

6. The child's residence shall not be removed from St. Francis or Cross County

FILED - RHONDA SULLIVAN
CLERK AND EX-OFFICIO RECORDER
10:01 AM
APR 11 2012

Counties without an order from the court.

7. All other provisions which are not directly contradictory to this order remain in full force and effect.

IT IS SO ORDERED.

HON. ~~BENTLEY STORY~~
DATE ENTERED 11 APRIL

Approved as to form and content:

Robert M. Ford
Attorney for Plaintiff

Kathleen Talbott
Attorney for Defendant

A-6

EXHIBIT TWO (2)

Good Morning Members of the Board,

I am Glen J. Bashaw, the father of Rosalynn Bashaw. I am here this morning to appeal the decision of the Wynne Public School District to deny a school transfer for my daughter to CONTINUE attending the Wynne Public School District. Her mother and I have Joint Custody with no primary. Her mother currently resides within the Wynne School District and has since the school year of 2012-2013 when Rosalynn began kindergarten, thus Rosalynn is a current student of the Wynne Public School District. I, however, reside within the Forrest City School District and have provided transportation to and from the Wynne Schools when Rosalynn is at my home. I am not challenging the stance of the Forrest City School District or the Desegregation Order, however, I am attempting to provide a sense of stability during this chaotic time in my child's life, IF indeed there is a change in custody.

There is a network of Pre-school and After-school care currently established in Wynne and my child is involved with social activities that provide her with more ties to the community. My daughter's immediate family lives in Wynne and can provide assistance and/or care in a well-timed manner in the event of an emergency situation. Any sense of stability will be beneficial for Rosalynn during this time and a change in schools could be detrimental to her academic success because of emotional and/or mental stress caused by circumstances out of her control, not by the educators of a school district she attends.

C E R T I F I C A T E

STATE OF ARKANSAS)
) ss.
COUNTY OF SALINE)

I, SHARON K. HILL, CCR, a Certified Stenomask Reporter before whom the foregoing testimony was taken, do hereby certify that the same is a true and correct transcription of proceedings before the Arkansas State Board of Education, in Little Rock, Arkansas, on August 6, 2015, that the said testimony was reduced to typewritten form by me or under my direction and supervision; and that the foregoing pages constitute a true and correct transcription of all evidence heard and proceedings had in said matter.

I FURTHER CERTIFY that I am neither counsel for, related to, nor employed by any of the parties to the action in which this hearing was taken.

I FURTHER CERTIFY that I have no contract with any parties within this action that affects or has a substantial tendency to affect impartiality, that requires me to relinquish control of an original transcript or copies of the transcript before it is certified and delivered to the custodial agency, or that requires me to provide any service not made available to all parties to the action.

WITNESS, MY HAND AND SEAL, THIS DATE: August 18, 2015.

Sharon K. Hill

SHARON K. HILL, CCR
Certified Court Reporter
Certificate No. 670